

Exhibit 4

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Volume 1
 Pages: 1-197
 Exhibits: 1-9
 UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

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 JOHN BRADLEY,
 Plaintiff
 vs. Cause No.
 1:13-cv-12927-RGS

TIMOTHY J. CRUZ, Individually,
 MICHAEL HORAN, Individually,
 FRANK J. MIDDLETON, Individually,
 and OFFICE OF THE DISTRICT
 ATTORNEY FOR PLYMOUTH COUNTY,
 Defendants.
 ----- x

DEPOSITION

of

FRANK J. MIDDLETON, JR.

Sinsheimer & Associates
 92 State Street, 9th Floor
 Boston, Massachusetts 02109

Monday, September 21, 2015
 10:20 a.m.

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1 That was it.
 2 Q. And that conversation was sometime in
 3 November of --
 4 A. I think it was probably -- I think it was
 5 in December because I think it was before
 6 -- he had a trial in December. I think
 7 it was before that, because I remember Tim
 8 saying he's got a trial in a couple weeks
 9 and he has his last one in a couple
 10 months.

11 MR. SINSHEIMER: I think this is
 12 a great place to break for lunch.

13 MR. COHEN: Okay.
 14 (Luncheon recess.)
 15
 16
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 24

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AFTERNOON SESSION

2 MR. SINSHEIMER: On the record.
 3 Carol, please read back where I was.
 4 (Record read back as requested.)

5 Q. (By Mr. Sinsheimer) And did you have
 6 conversations with anyone else other than
 7 Tim Cruz about the fact that John Bradley
 8 planned to leave the office after his
 9 last two cases were tried?

10 A. Yes.

11 Q. Who?

12 A. My wife, Tom --

13 Q. Is that a privileged conversation?

14 A. It is.

15 Q. Okay.

16 A. Tom Flanagan. Christine Kiggen. I
 17 believe Sharon Donatelle. Maybe Gayle
 18 McKenna. It was I was told everybody in
 19 the office knew he was leaving. He was
 20 telling people he was leaving after his
 21 last case.

22 Q. Who do you understand -- let me just -- I
 23 went too fast. Tom Flanagan, Christine
 24 Kiggen, Donatelle?

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1 A. Sharon Donatelle.

2 Q. Sharon Donatelle?

3 A. Maybe Gayle McKenna. I am not 100 percent
 4 on that.

5 Q. Maybe Gayle McKenna. Understood. Anyone
 6 else you can think of today?

7 A. No.

8 Q. I've got four names; Flanagan, Kiggen,
 9 Donatelle and McKenna.

10 A. There were probably a half dozen others.
 11 I just can't remember specifics.

12 Q. All right.

13 A. Especially when the change was made from
 14 -- when the Chief District Court
 15 prosecutor change was made from John to
 16 Tim Shiner, that's when I started getting
 17 inquiries from the Superior Court staff
 18 that slowly then turned it into
 19 complaints, that they demanded to know
 20 what was going on, why he only had one
 21 case.

22 Q. Okay. And who asked you why did John only
 23 have one case?

24 A. Tom Flanagan, Christine Kiggen, multiple

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1 others.

2 Q. Those two that you can think of?

3 A. Multiple others. I just can't give you
 4 the specifics. A number of, pretty large
 5 number of Superior Court staff were
 6 disgruntled. They were making, some of
 7 them, less than half of what Mr. Bradley
 8 was making. He only had one case. A
 9 number of those people came to me and told
 10 me that he was telling the rest of the
 11 staff that I wouldn't give him any cases.
 12 Now, the only thing, if I could just
 13 qualify that a little bit.

14 Q. Please, yes.

15 A. I don't know if that last one, meaning
 16 when they finally told me that he was
 17 spreading that false statement that I
 18 wouldn't give him cases, I don't know if
 19 that was before he left or after he left,
 20 after he was terminated.

21 Q. Did you know he was going to be terminated
 22 the date he was?

23 A. Yes.

24 Q. Ahead of time?

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1 A. Yes.
 2 Q. How did that come about?
 3 A. I was sitting in my office and Tim -- I
 4 think I had the door shut. Tim knocked on
 5 the door, came in. He said you might want
 6 to think about leaving early today. So I
 7 was like why. He had like I am leaving
 8 early, you might want to think about
 9 leaving early today. And then he
 10 indicated that Mike was going to be
 11 talking to Bradley. He didn't tell me
 12 exactly. He didn't say the words
 13 terminated. Mike was -- this was
 14 Bradley's last day and I might not want to
 15 be around.
 16 Q. Okay. You said, I think, if I heard you
 17 correctly, that others had told you that
 18 Bradley had told them that he was leaving.
 19 A. Yes. Karen O'Sullivan had told Christine
 20 Kiggen that, according to John, he was
 21 going to try his last case and then he was
 22 moving on. And I pretty -- I couldn't
 23 tell you who, but I know I heard it
 24 through other sources as well. Flanagan

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1 told me that it was well-known in the
 2 Superior Court that John was leaving after
 3 his last case.
 4 Q. But as far as you're testifying today, the
 5 source of that information was Karen
 6 O'Sullivan?
 7 A. According to Christine Kiggen. I didn't
 8 say it. That is what she attributed, at
 9 least John's direct statement and that
 10 conversation. She spoke to Ms. O'Sullivan
 11 quite a bit.
 12 Q. Who else, if anyone, told you that they
 13 believed that John was planning to leave
 14 and if they heard it directly from John?
 15 A. Directly from John? I don't know. I
 16 think Flanagan didn't say he heard it
 17 directly from John. He heard it from
 18 multiple people who said they heard it
 19 directly from John.
 20 Q. Tim Flanagan?
 21 A. Tom Flanagan.
 22 Q. Tom Flanagan. I am sorry.
 23 A. Plus Mike Horan.
 24 Q. Did Hourihan, Daniel Hourihan leave the

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1 office?
 2 A. Yes, he did.
 3 Q. Why did he leave, do you know?
 4 A. I don't.
 5 Q. How about Lou Armisted, did he leave?
 6 Yes. He retired.
 7 Q. What does that mean, as opposed to --
 8 A. Well, he came and said he was retiring.
 9 He told me that he was retiring, thanked
 10 us, thanked Tim, thanked me for everything
 11 we had done for him and said he was going
 12 to retire. He might do, he said I might
 13 hang out a shingle in a while and do some,
 14 you know, some work.
 15 Hourihan simply said that he was
 16 going to Bristol. Same thing, he met with
 17 Tim. I don't know that he -- I think I
 18 met with him too. I have to meet with
 19 everyone to do an exit interview and go
 20 through their cases for reassignment so
 21 they can show me the ones that are ticking
 22 time bombs and decide, you know, where I
 23 can send those cases.
 24 Q. Did Dan Hourihan go to Bristol?

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1 A. Sure.
 2 Q. Is he at Bristol now?
 3 A. He is at Bristol now.
 4 Q. Tim Shine, did he leave?
 5 A. Yes.
 6 Q. Why did he leave?
 7 A. Private practice.
 8 Q. Tara Coppola, did she leave?
 9 A. Yes.
 10 Q. And why did she leave?
 11 A. Private practice.
 12 Q. Just because they preferred private
 13 practice?
 14 A. Usually it's money.
 15 Q. What percentage, let's say, the year 2011,
 16 roughly in that range, what percentage of
 17 your work was administrative as opposed to
 18 trial work?
 19 A. I don't know if I can -- it's not all, for
 20 me it's not all administrative or trial
 21 work.
 22 Q. Uh-huh. What else was it?
 23 A. I have to supervise. Well,
 24 administratively supervising the staff and

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1 disagree with that?

2 MR. COHEN: Objection.

3 THE WITNESS: Answer?

4 MR. COHEN: Sure.

5 A. I would strongly disagree with that. That

6 would be -- that would make no sense.

7 Q. How many, let's say in 2011, roughly, how

8 many hours a week on average did you spend

9 in the office?

10 A. It depended on the week. If I was

11 preparing --

12 Q. No, it doesn't depend on the week, with

13 all due respect, because I asked the

14 question on average. That is what I am

15 looking for is your rough average.

16 A. I don't know. I don't know how to average

17 out a whole year. I was working when I

18 wasn't at the office as much as when I was

19 at the office.

20 Q. There was a concept of there being someone

21 being an on-call person?

22 A. Yes.

23 Q. What was that concept?

24 A. It was a rotating list of the Superior

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1 Court ADA's who handled the on-call calls

2 during the week, that's calls during the

3 day and the night from any source. It

4 runs the gamut. Any citizen that calls in

5 looking for and has a question.

6 MR. SINSHEIMER: Mark that as

7 Exhibit 5.

8 (Document marked as Exhibit 5 for

9 identification.)

10 MR. COHEN: Thanks.

11 Q. Have you seen this e-mail before?

12 A. Sure.

13 Q. Is this one of the e-mails that you

14 referred to earlier that you reviewed in

15 preparation for today?

16 A. I didn't review it for today's depo, but I

17 have seen it in the past.

18 Q. Okay. And who is Emily Garvey?

19 A. She was one of my part-time secretaries.

20 Q. How many secretaries did you have?

21 A. I had one that worked until 2:30 or three

22 and then Emily covered me in the

23 afternoons and covered if she was out.

24 Q. And who was Joseph <ason?

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1 A. Captain of the State Police Detective Unit

2 assigned to the DA's office.

3 Q. And so it looks if I read the e-mail from

4 Emily to Mr. Bradley that she is telling

5 him that you are going to be on vacation

6 for two weeks and you wanted Mr. Bradley

7 to be the on-call person and that he was

8 expected to reach out to Joe Mason.

9 Do you see that?

10 A. On-call person regarding homicides.

11 Different callers, the homicide calls is

12 different than the on call.

13 Q. It is more significant for one thing,

14 right?

15 A. Well, the homicide calls is what I do,

16 meaning --

17 Q. Okay. And my question to you, is it true

18 that you instructed Ms. Garvey to send

19 this e-mail?

20 A. Yes.

21 Q. And did you -- why didn't you just talk to

22 Mr. Bradley directly?

23 A. Because this was 2007 and Mr. Bradley

24 refused to talk to me as of July 2006. So

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1 this was -- this would have been a year

2 after he stopped acknowledging my

3 presence. He did not want me to talk to

4 him, apparently, so I had this e-mail sent

5 by somebody. If I had sent the e-mail, he

6 wouldn't have reviewed it. My opinion was

7 he wouldn't have done any of it if I had

8 sent it. And this was at the direction of

9 the District Attorney that Mr. Bradley was

10 to cover for two weeks the job I did for

11 52 weeks out of the year, which is the

12 homicide call at night.

13 Q. And it doesn't say that it is a directive

14 from the District Attorney, does it?

15 A. No.

16 Q. It says that you would be, you would,

17 Frank wants you, meaning Bradley, to be

18 the on-call guy?

19 A. He would like you to be the on-call

20 person, yes.

21 Q. Yes. And did you know whether John was on

22 vacation or not when you sent it?

23 A. No, I didn't know. I think when this got

24 sent I was probably already gone.

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1 Q. Were you, in your mind, Mr. Bradley's
2 superior in the hierarchy of the office?
3 A. Yes and no.
4 Q. Was -- let me go back to something you
5 said a minute ago. Mr. Bradley stopped
6 talking to you in 2006?
7 A. Correct.
8 Q. Did he tell you why?
9 A. No.
10 Q. Did you ever have a discussion with
11 anybody about the fact that Mr. Bradley
12 wasn't speaking with you?
13 A. No, not really.
14 Q. How about Mr. Horan?
15 A. We may have. Yes, I am sure it came up.
16 But I can't remember any particular
17 discussions. Definitely not many.
18 Q. How about Mr. Cruz?
19 A. May have. I don't remember any
20 particulars. Definitely wasn't something
21 we spoke about very often if at all.
22 Q. Did you think it was significant that a
23 senior member of the office wouldn't speak
24 with you?

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1 A. Did I think it was significant? I thought
2 it was bizarre. I didn't think it was
3 significant.
4 Q. Had you ever had an argument with
5 Mr. Bradley?
6 A. No.
7 Q. Have you ever to this day had an argument
8 with Mr. Bradley?
9 A. No.
10 Q. Have you ever had a face-to-face argument
11 with Karen O'Sullivan?
12 A. No.
13 Q. How about that time when she came in and
14 complained about the raises, that wasn't
15 an argument in your mind?
16 A. It wasn't even close. I told her the
17 reasons, that at that point the raises had
18 nothing to do with me. She wasn't -- she
19 was complaining to me but it wasn't about
20 me. I told her that I didn't set any of
21 those salaries, that those were all set by
22 Mike Horan. He was in charge of raises at
23 that time, so I let Mr. Horan know that
24 she was complaining about him.

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1 Q. You felt that Mr. -- you felt that Ms.
2 O'Sullivan was complaining to you about
3 Mr. Horan?
4 A. Well, that is once I explained to her that
5 you're complaining about raises of people
6 that I didn't set the raises so --
7 Q. Given the memos that we have seen,
8 Exhibits 1 through 4, if I suggest to you
9 it appears to an outsider it is the other
10 way around, that Mr. Horan is complaining
11 about you and that you were the one that
12 writes this long memo saying how false
13 everything he says is, how is it that Ms.
14 O'Sullivan would have come to you
15 complaining about Mr. Horan?
16 A. I don't understand the question.
17 Q. Fair enough. You know why, it was an
18 absolutely terrible question. Yeah, it
19 was.
20 MR. COHEN: We are in violent
21 agreement.
22 MR. SINSHEIMER: At least there
23 wasn't a jury in the room.
24 MR. COHEN: Yes, right.

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1 Q. If I understand it, you wrote Exhibit 1?
2 A. Correct.
3 Q. And basically, the very first thing it
4 says, "Mr. Horan claims that Ms.
5 O'Sullivan approached me recently to
6 inform me of an ongoing situation that
7 exists between herself, First Assistant
8 Middleton and Chief Middleton." Right?
9 A. Correct.
10 Q. And your response is that is false?
11 A. Correct. That was information I had.
12 Q. So it appears to me that, just reading
13 that, that Ms. O'Sullivan had made some
14 kind of complaint about you to Mr. Horan.
15 A. It appears that way.
16 Q. Which is also set forth in this
17 memorandum, Exhibit 4?
18 A. Correct.
19 Q. And what you are saying, it is actually
20 the other way around, that Ms. O'Sullivan
21 complained to you about Mr. Horan?
22 A. No. I am saying that she came in and
23 complained about disparate pay between men
24 and women to me, but I informed her that I